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Dawaiian Gazette.

WEDNESDAY, AUGUST 12 1885

Supreme Court of the Hawalian Islands In Equity. M KAPENA, MINISTER OF FINANCE, VS EMMA KALELEONALANI, QUEEN DOWAGES, HON. MRS. B. P. BUSHOF AND C. R. BISHOF.

Quintennt Chanceline John. The following is a simplified statement of the essential allegations in the bill:

I. Certain premises on Merchant street in Honolulu, known as "Honolulu Hale," as well as several other parcels of land described in the bill, were the property of Kamehameha IV in his private capacity, and were not a part of the Royal Domain commonly known as "Crown Lands," although they were erroneously understood and believed to be such and were so treated.

treated.

I An Act of the Legislature passed
January 3rd, 1895, entitled "An Act to re
lieve the Royal Domain from encumbrances &c.," authorized the Minister of Finance to extinguish such mortgages on the Crown Lands as might remain unsatis-fied after the administrators of Kameha meha IV's estate had exhausted the estate belonging to their deceased intestate in

Iff. The property described in paragraph
I was not sold by the administrators, because it was believed to be a part of the
Royal Demain and not the private estate
of the deceased King.
IV. The premises above described as
"Honolulu Hale," as well as certain "Crown
Lands" had been encumbered with a mort

gage by His Majesty Kamehameha IV through the intervention of Wm. Webster s trustee, and this mortgage amounting o \$7.732, was paid off by the Minister of Finance in pursuance of the said Act of the Legislature of January 3rd, 1865, under the belief that all the private estate of Kamehameha IV had been sold, and the Minister of Finance paid other mortgages and liens amounting in all to the sum of \$27,000, towards discharging the debts of

V. The plaintiff is the Minister of Fi of this Kingdom makes this demand

ple of this Kingdom makes this demand and asks for the relief prayed for. The defendant Emmu is the widow and statutory heir of one half of the estate which was of Kamehameha IV.

VI. The premises above described as "Honolulu Hale" were held by the Commissioners of Crown Lands as part of the Royal Domain from the time of the creation of their trust by law until the termination of a suit on the equity side of this Court brought by defendants against the Commissioners of Crown Lands, by which the said premises were decreed to belong to the defendants.

The bill prays that the premises known as "Honolulu Hale" may be decreed to be chargeable with the amount of the mort gage paid off by the Minister of Finance and that they be sold to satisfy the Both defendants demur. The questions

raised are (first) the Commissioners of Crown Lands necessary parties to the bill either as plaintiffs or defendants. I cannot see that the Commissioners of terest in the premises sought to be charged with the payment made, or in the fund sought to be recovered by the Minister of finance. Their claims have been con-idered and adjudicated by the Court and

they cannot be again heard.

If the Minister of Finance has paid from the public treasury a greater sum than he would if the land in question had been sold to extinguish the mortgage upon it, his right to recover this sum from the owners of the land is unaffected by the fact that the Commissioner of Crown Lands have had possession of the premises and collected its rents, for they are ac countable for these rents, not to the Minis ter of Finance, but to the defendants, the holders of the title. The diminution of the supposed extent of the "Crown the decree above referred to in favor of defendants, is a matter not raised by the bill and the enquiry as to who should be made good in consequence of

ani be made parties instead of her heir

It is elementary law that it is not neces ary to make the personal representatives of a mortgage parties to a bill for fore closure of a mortgage upon real estate. See Story's Eq. Iur. Sec. 175. The learned author says this is not necessary even though the mortgage is primarily a debt chargeable upon the personal assets.

If the bill sought to charge the personality of the deceased defendant with this chow or to recover from it.

his claim or to recover from it any de-iciency over and above the proceeds of of the land, her personal representatives should be made parties, otherwise not. It was so held in Leonard vs. Morris 9 Paige 89. I think the heir and devisee who holds the title to the real estate sought to be charged with a lien is the proper party defendant. The case of Campbell vs. Ka-

defendant. The case of Campour's, Ra-managelli 3 Hawn. R. 477 is in point.

The objection taken by defendants that the administrator of Kamehameha IV had no authority to sell the deceased King's lands in order to pay his debts, I do not think is tenable. The jurisdiction to order such sales, when the personal estate is insuch sales when the personal estate is in-sufficient has been exercised by the Pro-oate Courts of this Kingdom from the statute was passed by the Legislature of 1876. The administrator did as a matter of fact sell many of the King's private lands in pursuance of the authority of the Probate Court

I do not think that the fact that the law set apart one fourth of the revenues of the Crown Lands to be devoted to the re-payment of the advances made by the Treasury affects this case.

Nor do I think the issues raised in this case are affected by the subsequent act of Story id. 120 says "The most general class of cases relied on as exceptions to the rule of Crown Lands from all liability to repay is that class where the party has acted of Crown Lands from all liability to repay these advances. This law made the grant in relief an absolute gratuity, the object of the Legisjature being to relieve the Boyal Domain of the mortgages upon it and thus benefit the reigning Sovereign by enhancing the revenues of the Crown Lunds. I can see nothing in the Acts indicating that their object was to benefit the heirs at law of Kamehameha IV. The reigning Sovereign Kamehameha IV. The reigning Sovereign Kamehameha IV. Was a person who had parted with a title of whose existence he was wholly ignorant not the deceased King Kamehameha IV. The heir at law. The statutory heirs of Kamehameha IV. In 15 American Decisions 169 the case.

has had the land taken from him on an execution issued upon a judgment rendered against his grantor in an action on a debt secured by a mortgage of the grantor's other land, may maintain a bill in equity against his grantor and the judgment creditor, to be subrogated, to the extent of his loss by the levy, to all the rights of the latter under the mortgage, not required for the full satisfaction of extent of his loss by the levy, to all the rights of the latter under the mortgage, not required for the full satisfaction of the debt. It was claimed in the demurrer that the bill showed that the mortgage was extinguished and discharged by the levy so that the judgment creditor had no rights to which the plaintiff could be subrogated or which could be assigned to the plaintiff; also that the plaintiff omitted to record his deeds as required by law through no fault of the defendants but through gross negligence from the consequences of which he had no ground of relief in equity. Chapman J. says "The doctrine of subrogation is not founded in contract, either) express or implied, but is resorted to either express or implied, but is resorted to for the sake of doing justice between the the premises in question was "Crown

given to the creditor for the debt." I will again refer to this case later on.

The mortgage upon the land in question should in equity and good conscience have been paid by the administrator of the estate of Kamehameha IV. out of the proceeds of the land itself. for it was private land of the King. The Minister of Finance was not a mere volunteer, for it is to be presumed that he was requested to pay this mortgage by the administrator. He cannot be regarded as having made the payment officiously and without any color of obligation to do so. The act in question placed the obligation upon him

color of obligation to do so. The act in question placed the obligation upon him to discharge the mortgages upon the Crown Lands. In attempting to do this he made the double mistake, first, of paying the mortgage before the administrator had exhausted the private lands of his intestate, and secondly, of paying a mortgage existing upon a private land of the King. But he nevertheless paid a debt which the administrator or the heirs at law of the King should have paid, and under the definitions above given of the under the definitions above given of the doctrine of subrogation, he should have

a former owner, subsequent to the mortgage, pays the mortgage and causes the
same to be satisfied of record, he is entitled should be made good in consequence of the diminution, whether the Grown of the public Treasury, is therefore not pertinent to the issues before me.

I do not think the bill is demurrable on account of the non-joinder of the Commissioners of Grown Lands.

The second question is should the exemises now owned by the plaintiff, paid off and satisfied by the devisees of Burr, the cutter of the late R. Keeliko the nowners, and reinstates the same as a lien upon the mortgaged premises prior and paramount to the lien of the judgment recovered by Orchard and assigned to the defendant, is clearly right. Upon pay ment of the mortgage by the then owner of the premises, they were entitled to all the rights of the mortgagee and to an assignment of the mortgage; and having caused the same to be satisfied under cir caused the same to be satisfied under cir-cumstances authorizing an inference of a mistate of fact, equity will presume such mistake and give the party the benefit of the equitable doctrine of subrogation. To do this in this case is to prevent manifest injustice and hardship and interferes with no superior intervening equities."

Here the revening equities."

Here the payment was made in ignor-nce of the fact of a judgment lien. In the case from 102 Mass, the payment was made (or rather the land was levied upon) because the grantee had, through ignorance of law, not recorded his deed. In the case before us, the Minister of Finance was ignorant of the fact that the nortgaged premises was private land of he King. He acted under the mistaken belief that the land was Crown Land. Is this such a mistake as will entitle him to

The general rule is that ignorance of law will not furnish an excuse for any person, either for a breach or for an on on of duty. 1 Story's Eq. Jur. 110. The presumption is that every person is acquainted with his own rights, provided he has had a reasonable opportunity to know them. Judge Story says, id. Sec. 116, that whatever exceptions there may be to this rule they will be found to have some thing peculiar in their character and to involve other elements of decision." of cases relied on as exceptions to the rule, is that class where the party has acted

eir at-law. The statutory heirs of Ka achameha IV were his widow and his of Black and Ward from 27 Mich. 191 is aining question is whether the authorities are well reviewed. I excerpt bill shows title to the plaintiff to relief in the following: "The case of Brigham vs equity.

Brigham 1 Ves. Sen. 126 is an important Is there a lien in equity in favor of the public Treasury upon the premises in question by virtue of the Treasury having paid the mortgage upon it? Is the Minister of Finance subrogated to the rights of the money, holding that there was a plain mistake, such as the Court was warranted to mistake such as the court of the court

paid the mortgage upon it? Is the Minister of Finance subrogated to the rights of the mortgagee?

The decision of these questions involve the discussion of many points not easy of solution.

The duty was by the law cast upon the Minister of Finance in connection with the Commissioners, to negotiate for the redemption of the mortgages, and he was to issue the bonds and use them to "extinguish those mortgages which may remain unsatisfied after the administrator of his late Majesty's estate has exhausted all the estate belonging to his late Majesty, in a private capacity, which the administrator may be legally entitled to use for the payment of the debts of the estate.

The bill alleges that the Minister of Finance, believing that all the private estate of Kamehameha IV had been sold in accordance with the provisions of the law, is sued \$27,000 of Government bonds and extinguished the mortgages.

Subrogation is defined by Sheldon to be withe substitution of another person in the place of a creditor so that the person in whose favor it is a exercised succeeds to the rights of the creditor in valence of a creditor so that the person in whose favor it is a exercised succeeds to the rights of the creditor in valence of a creditor is relative against.

Court ordered the defendant to refund the money applain mistake, such as the Court was warranted to refund the money holding that there was a plain mistake, such as the Court was warranted to refund the money is plain mistake, such as the Court was warranted to refund the money is plain mistake, such as the Court was warranted to relieve against.

"The Master of the Rolls. Sir John Leach, in a later case (Ceckerell vs. Cholmanistate, such as the Court was warranted to refund the money is applied to relieve against.

"The Master of the Rolls by Ito Orelieve the the time, not only of the facts upon which the independent of his to confirm a title, unless he was fully aware at the time, not only of the facts upon which the independent of his to confirm a title, unless he was place of a creditor so that the person in whose favor it is exercised succeeds to the rights of the creditor in relation to the debt. The substitute is put in all respects in the place of the party to whose rights he is subrogation is treated as the creature of equity and is so administered as to secure real and essential justice without regard to form and is independent of any contractual relations between the parties to be affected by it." "It is broad enough to include every instance in which one party pays a debt for which another is primarily answerable, and which in equity and good conscience, should have been to define the contractual relations between the parties to be affected by it." It is broad enough to include every instance in which one party pays a debt for which another is primarily answerable, and which in equity and good conscience, should have been to be affected by it.

discharged by the latter; but it is not to be applied in favor of one who has officiously and as a mere volunteer, paid the debt of another, for which neither he nor his property was answerable and which he was under no obligation to pay; and it is not allowed where it works any injustice to the rights of others." Shelden on Subr.

Sec. I.

Eighburg 1972 The principle is a condition of the principle is a condition of the subress and the continued in Stederal vs. Anderson 31 Coun. 139.

I think it is clear from the above cases that where reasons could be subreaded.

Bispham says, "The principle is a general one, and will apply in every instance (except in the case of a mere stranger where one man has paid a debt for which another is primarily liable." Bispham Principles of Eq. Sec. 337.

Chancellor Kent in the leading case in America, Checebrough vs. Millard 1 John. Ch. 412 says, "It is a rule which is founded on natural instice and is recognized in

Ch. 412 says, "It is a rule which is founded on natural justice and is recognized in every cultivated system of jurisprudence."

The doctrine does not depend upon privity. It is not necessary to show any privity of contract between the Minister of Finance and the mortgagee.

The debt has been paid and the mortgage discharged. But this is not fatal to the application of the doctrine, "although as between debt or and creditor, the debt has been debt or and creditor, the debt may be extinguished, yet as between the person who has paid the debt and the other parties the debt is kept alive so far as may be necessary to preserve the seother parties the debt is kept alive so far as may be necessary to preserve the securities."

Wall vs. Moton 102 Mass. 316. This case is an instructive one. A grantee of land, who, through neglect to record his deed, has had the land taken from him on an fact. Courts have constantly felt and containing the same and may be dealt with as mistakes of fact.

either express or implied, but is resorted to for the sake of doing justice between the parties. In the present case, the plaintiff, by neglecting to record his deed, left his land exposed to be attached and taken on execution by the creditor of his grantor. It has been taken and set off by the defendant Thayer. The plaintiff has thus paid his grantor's debt which the grantor ought to have paid himself; and it is but just that he should have the benefit of ithe security which his grantor had previously the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu morn the "Horoslulus the bill to have a lieu the particulus the proposed to be presumed that the premises in question was "Crown Land." It is to be presumed that the premises in question was "Crown Land." It is to be presumed that the premises in question was "Crown Land." It is to be presumed that the premises in question was "Crown Land." It is to be presumed that the premises in question was "Crown Land." It is to be presumed that the premises in question was "Crown Land." It is to be presumed that the premises in question was "Crown Land." It is to be presumed that the premises in question was "Crown Land." It is to be presumed that the premises in question was "Crown Land." It is to be presumed the premises in question was "Crown Land

I think the Minister of Finance representing the public Treasury is shown by the bill to have a lien upon the "Honolulum". ust that he should have the belief to have a lien upon the "Honomus security which his grantor had previously given to the creditor for the debt." I will Hale, premises to the extent of the amount of its value at the time the mortgage was

The demarrer is overruled. Attorney-General Neumann for plain tiff; A. S. Hartwell for Mr. and Mrs Bishop; F. M. Hatch for Queen Emma. Honolulu, July 23, 1885.

In the Sapreme Court of the Hawaiian Islands--In Equity. In Banco. July Term 1885.

M. S. Grinbaum & Co. vs. The Heria Sugas Plantation Co. et. al. Before Judd, C. J., McCully and Prestan, J. J. Opic

This is an appeal by the defendant The Heeia Segar Co. from a decision of the Chan-celler made on the 17th instant denying a mo-tion made on behalf of the said defendant to

seigd the decree of foreclos-On behalf of the defendant it was contended that as the complainant's had not kept a sep-arate account of the moneys due on account of the morigage and of the account current doctrine of subrogation, he should have
the benefit of the security given by the
ancestor of the heirs at law to the mort
gagee.

"Where the owner of premises conveyed
to him subject to a mortrage, in ignorance." to him subject to a mortgage, in ignorance sidering their position as agents for the de of the lien thereon of a judgment against fendant, to have given notice of their intention

A. S. Hartwell for complainant; P. No

E. P. ADAMS. Auctioneer and Commission Merchant. A. S. CLEGHORN & Co.. General Merchandise,

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C. Statewill, a COMPART.

For J. G. Carrar, Sec. School of the Javis Furnished
Hobertain, February 1: 1882.

KNOWLES'

STEAM AND VACUUM PUMPS

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no imported. We call the attention of planters pur-florly to the Varian Plante, which is been compil-ed and Corn section its than other parage. ON His

A LL PERSONS ARE REQUESTED not to fruit my wife LUCY, or my account, from and after fills care.

Carpacechee, July 25, 1805. Colcan Marie file.